

EXHIBIT A

NATIONAL ASSOCIATION OF SECURITIES DEALERS REGULATION, INC.

ARBITRATION PANEL

In the matter of the Arbitration between

JORDAN P. GATES, CFP, CLU, ChFC, MSFS,
CFS, LUTCF,

Claimant,

v.

VERAVEST INVESTMENTS, INC., ALLAMERICA
FINANCIAL, ALLAMERICA INVESTMENT
MANAGEMENT COMPANY and MICHAEL R.
BURGOYNE,

Respondents.

NASDR Arb. No. **03-08688**

STATEMENT OF CLAIM

Pursuant to section 10100 et seq. of the Uniform Code of Arbitration, claimant Jordan P. Gates ("Gates") demands arbitration against Respondents Allamerica Financial (Allamerica), Allamerica Investment Management Company ("AIMCO"), VeraVest Investments, Inc. ("VeraVest") and Michael R. Burgoyne ("Burgoyne") (collectively, "Respondents") before the National Association of Securities Dealers, Inc. ("NASD"). For his Statement of Claim against Respondents, Gates alleges as follows:

I. PARTIES

1.1 Prior to his termination on December 31, 2002, claimant Gates was the Director of Financial Planning for the Pacific Northwest branch, a Financial Planner and a registered representative at Allamerica. Gates is registered with the NASD.

1.2 Respondent Allamerica is a member of the NASD. On January 1, 2003, Allamerica was renamed VeraVest.

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1 1.3 Respondent Burgoyne is a Managing Director, Financial Planner and a
2 registered representative at Allmerica. Burgoyne is registered with the NASD.

II. BACKGROUND FACTS

4 2.1 Gates was employed by Allmerica from February 14, 1994 until his termination
5 on December 31, 2002. Gates worked in the Lake Oswego, Oregon office of Allmerica
6 throughout this time. Gates was the most profitable advisor, and was either the highest or
7 second highest producer for the previous five years from 1997-2001 for the entire Pacific
8 Northwest firm, which consisted of over 35 advisors. Gates was also highly regarded by
9 Allmerica and his peers, and Gates was chosen by Allmerica to be a member of the national
10 field faculty. Gates was asked to speak throughout the country and at most national
11 conventions due to his financial planning expertise.

12 2.2 The Career Agent Agreement and Middle Management Agreement entered into
13 by Gates and State Mutual Life Assurance Company of America and SMA Life Assurance
14 Company, two companies owned by Allmerica Financial, provides for payment of
15 commissions and fees earned up to the time of termination. [See Exhibits 1 and 2.] The
16 Allmerica Investment Management Co. (AIMCO) Contract which Gates signed on February
17 14 1994 stated that five (5) days written notice must be provided prior to any termination
18 without cause. [Exhibit 3.] Gates did not receive the agreed-to five days written notice of
19 termination.

20 2.3 On November 25, 2002, Gates received written notice that Allmerica was
21 canceling his Allmerica Agent contract effective December 31, 2002, since the company
22 was changing to a different method of compensation. Allmerica did the same for all of its
23 advisors. The advisors were told that they would be offered a new contract as of January 1,
24 2003.

25 2.4 Gates was supervised by Burgoyne and Paul McClung ("McClung"). McClung is
26 a Sales Supervisor who supervises the compliance activities of the Pacific Northwest

1 branch. McClung's supervision was limited to compliance issues. In the early part of
 2 March, 2002, after the two former Co-Managing Directors left the firm to take positions with
 3 MetLife, Burgoyne and Gates were promoted to greater leadership positions. Burgoyne was
 4 promoted to Managing Director and Gates took on new responsibilities and tasks in the
 5 position of Director of Financial Planning. Soon after their promotions, animosity over
 6 management style developed between Burgoyne and Gates. Gates sent Burgoyne
 7 numerous emails stating Gates' concerns regarding Burgoyne on various management and
 8 work issues.

9 2.5 After animosity developed between Gates and Burgoyne, in June, 2002,
 10 Burgoyne began auditing Gates' correspondence. Burgoyne wrote a letter to Gates, and
 11 forwarded it to William Monroe ("Monroe"), the Chief Compliance Officer for Allmerica, and
 12 Larry Gerkiere ("Gerkiere"), the Regional President for Allmerica. The letter outlined nine
 13 apparent violations revealed by his audit. Eight out of the nine violations involved
 14 correspondence which had already been submitted to the compliance department of the
 15 company by Gates as required by company rules without receiving any negative comments
 16 from the department. No one had ever discussed problems with the correspondence with
 17 Gates prior to Burgoyne's audit. As a result of Burgoyne's audit Gates had to respond to
 18 home office, and was fined \$2500 for the violations. Prior to the animosity which developed
 19 between Gates and Burgoyne, Allmerica never complained about Gates' performance with
 20 the company in the nine years that Gates was employed with Allmerica.

21 2.6 On October 22, 2002, at the request of his clients Chris and Cyndi Callahan and
 22 pursuant to standard Allmerica procedures, Gates completed a Check and Wire Fund
 23 Request Form to issue a check for \$1000 from the Callahan's Allmerica Investment
 24 Brokerage Account payable to them so they could open a new account they were
 25 establishing to start a college fund for one of their children. [Exhibit 4.] On the request form,
 26 Gates requested the check be made payable to the Callahans (account registration) and

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1 mailed to him at the office. Gates' intention was to deliver the check directly to the
 2 Callahans at the time that he met with them to write the application for the college savings
 3 plan.

4 2.7 Allmerica's home office mistakenly made the \$1000 check payable to the
 5 addressee (Gates) instead of the payee (the Callahans). [Exhibit 4.] When the check
 6 arrived in Gates' office on November 12, 2002, Gates' assistant, Christa Roedel ("Roedel"),
 7 saw that the check was issued from Allmerica Investments, and payable to Gates. Gates
 8 received many different checks from various companies so it was standard practice for
 9 Roedel to deposit the checks without showing them to Gates. Without showing the check to
 10 Gates, she asked Gates in an email where to deposit it. He instructed her to deposit \$800
 11 into his personal account and \$200 into his business account. [Exhibit 5.]

12 2.8 On December 2, 2002, Roedel discovered the home-office error when she
 13 contacted Allmerica Investments to ask why the Callahan check had not arrived. At the
 14 time, Gates was out of the country on vacation so Roedel contacted McClung. He told her
 15 to contact Darren Parent, a manager at Allmerica's home office. After explaining the error to
 16 Parent, Parent told Roedel not to worry about this incident because it was caused by a
 17 home office error and it was reported immediately upon discovery. Parent also told Roedel
 18 that the home office had made similar mistakes in the past and he knew how to correct it.
 19 He said he would issue a new check to the client and Allmerica would debit \$1,000 on
 20 Gates' next compensation cycle. [Exhibits 6 and 7.] The matter was completely resolved by
 21 Parent and Roedel before Gates even learned of any problem.

22 2.9 On December 4, 2002, Gates learned about the home-office mistake when he
 23 checked his email while in Mexico. [See Exhibit 6.] Immediately on his return from vacation,
 24 Gates discussed the matter with senior management at Allmerica. At least one senior
 25 manager, William Monroe (the Chief Compliance Officer), had not been informed the
 26 deposits into Gates' accounts were caused by a home-office error. After those
 conversations, Gates believed the matter was resolved entirely.

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1 2.10 On December 12, 2002, Burgoyne and McClung told Gates that Allmerica had
 2 decided not to offer Gates a contract with VeraVest (new name for Allmerica after 1/1/03) on
 3 January 1, 2003, because of the Callahan check incident. Burgoyne said it was not his
 4 decision, but told Gates that he agreed with the decision. Burgoyne told Gates he could
 5 finish up and continue to write business through December 31, 2002, but said all
 6 appointments at the office should take place in the building's common conference room.

7 2.11 Minutes later Burgoyne addressed Gates alone and told him that Allmerica's
 8 Chief Counsel, Ellen Rosenberg, said Gates could either resign as of December 31, 2002 or
 9 he would be terminated with a "yes" answer on some section of Gates' U-5. Gates did not
 10 understand what Burgoyne meant by that. When Gates asked Burgoyne to explain the
 11 options, Burgoyne said he could not comment since these were the options provided by
 12 Rosenberg.

13 2.12 On the same day Gates was notified that his Allmerica contract would not be
 14 renewed, McClung fired all three of Gates' staff without Gates' knowledge or consent.

15 2.13 After December 12, 2002, Gates asked McClung several times to explain the
 16 ramifications of the options provided by Rosenberg. The only response McClung gave was
 17 that the questions on the U-5 had changed and the question Burgoyne was referring to was
 18 no longer on the U-5. McClung informed Gates that what Burgoyne meant to say was that
 19 Gates could either resign or be terminated without cause. Gates then attempted to get
 20 clarification of the ramifications of the Rosenberg options from Lynn Miller, office and human
 21 resource manager for the Lake Oswego office. Gates did not receive an answer from Miller.
 22 Instead, she and McClung asked Gates to put his questions in writing.

23 2.14 On December 16, 2002, Gates put his questions about his options in writing.
 24 [Exhibit 8.] The questions were never answered.

25 2.15 Prior to Gates' termination, McClung told Gates his U-5 would state that Gates
 26 had been terminated without cause regardless of which option Gates chose. Gates was

1 also told by Miller that he would not be terminated with cause. Gates continued to ask for
 2 clarification of why he should chose one option over the other, but he never received an
 3 explanation of the ramifications of the different options (resignation versus termination
 4 without cause).

5 2.16 Between December 14, 2002 and December 31, 2002, clients who telephoned
 6 the Lake Oswego office of Allmerica were informed that Gates no longer worked at
 7 Allmerica, even though he was still employed there and wrote business up to and including
 8 December 31, 2002.

9 2.17 On December 17, 2002, McClung sent letters to Gates' clients indicating Gates
 10 no longer worked for Allmerica, and stated there were many other competent planners
 11 available to service their financial needs. [Exhibit 9.] Moreover, McClung told Gates' clients
 12 that he could not recommend Gates as a competent financial advisor.

13 2.18 Gates repeatedly requested orally and in writing that VeraVest release his U-5,
 14 but he did not receive it until after the 30 days required by NASD rules. [Exhibit 10.]

15 2.19 On February 6, 2003 VeraVest Investments, Inc. filed and mailed a Form U-5
 16 dated January 29, 2003. [Exhibit 11.] All of the following statements on the U-5 are either
 17 false or misleading:

18 2.19.1 Under Section 3. FULL TERMINATION, VeraVest wrote:
 19 "Reason- DISCHARGE". Explanation: "*CUSTOMER FUNDS DEPOSITED INTO*
 20 *REGISTERED REPS PERSONAL BANK ACCOUNT. REP. CLAIMS DEPOSIT WAS*
 21 *UNINTENTIONAL.*"

22 2.19.2 Under Section 7A., VeraVest answered "Yes" to the question,
 23 "*Currently is, or at termination was, the individual the subject of an investigation or*
 24 *proceeding by a domestic or foreign governmental body or self-regulatory organization with*
 25 *jurisdiction over Investment-related business?*"

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1 2.19.3 Under Section 7B., VeraVest answered "Yes" to the question,
 2 *"Currently is, or at the time of termination was, the individual under internal review for fraud*
 3 *or wrongful taking of property, or violating investment-related statutes, regulations, rules or*
 4 *industry standards of conduct."*

5 2.19.4 Under INVESTIGATION DRP, Section 1., VeraVest states that notice
 6 was received from "NASD-SEATTLE" that NASD was investigating the check incident with
 7 the Callahans.

8 2.19.5 Under Section 2., VeraVest stated that the NASD investigation was
 9 noticed on 12/19/2002.

10 2.19.6 Under Section 3., VeraVest stated, "*NASD REQUESTED FURTHER*
 11 *INFORMATION WHICH WAS PROVIDED IN A 12/20/02 LETTER FROM WILLIAM*
 12 *MONROE TO JEN GONYEA.*"

13 2.19.7 To date, under Section 7A Number 4., VeraVest states the
 14 investigation is "*NOT YET RESOLVED*".

15 2.19.8 INTERNAL REVIEW DRP, Section 3., VeraVest stated, "*AFTER*
 16 *PHONE CALL FROM REP'S ASSISTANT FIRM DISCOVERED CUSTOMER FUNDS HAD*
 17 *BEEN DEPOSITED INTO REP'S PERSONAL BANK ACCOUNT. REP CLAIMED*
 18 *DEPOSIT WAS UNINTENTIONAL.*"

19 2.19.9 Under Section 7B Number 4., VeraVest stated, the internal review was
 20 concluded on 12/18/2002 (while true this statement contradicts its own statements set out in
 21 ¶ 2.19.3).

22 2.20 A true and accurate U-5 was critical for Gates' to quickly become licensed with
 23 a new quality broker/dealer, and it continues to negatively affect Gates' ability to be
 24 considered for opportunities from other broker/dealers to the present. Since being notified
 25 of his termination, Gates started negotiating with major broker/dealers. He assured them
 26 that his U-5 would be "clean". As a result of the false and misleading information contained

1 on the U-5, all employment offers with these broker/dealers were withdrawn. It took Gates
 2 more than six months to finally get a broker/dealer to accept Gates with the false U-5 form
 3 issued by VeraVest.

4 2.21 Gates was informed on or about February 20th that his group life insurance
 5 had lapsed on December 31st, 2002, and that his grace period to reinstate this coverage
 6 ended on January 31st, 2003, 20 days before he received notice. Gates has medical issues
 7 that could prohibit him obtaining life insurance at affordable rates, and he most certainly
 8 would have extended this valuable coverage.

9 2.22 On February 6, 2003 AIMCO mailed a U-5 which was dated January 29, 2003
 10 accompanied with a letter dated January 29, 2003. The AIMCO U-5 falsely listed Gates'
 11 termination date as December 11, 2003. This date is five days before McClung's letter went
 12 out to Gates' clients stating that he no longer worked for Allmerica. The AIMCO U-5 falsely
 13 states that Gates' termination was voluntary. [Exhibit 12.]

14 2.23 The AIMCO contract requires five days written notice by either party to
 15 terminate the contract. Gates never received any written notice of an intent to terminate the
 16 AIMCO contract.

17 2.24 Allmerica wrote to SEI on December 17, 2002 to transfer all of Gates' fee
 18 business to another advisor at Allmerica even though Gates was not terminated until
 19 December 31, 2002. [Exhibit 13.]

20 2.25 Gates was not paid for commissions earned on SEI business through the last
 21 quarter of 2002, as required by his Agent Agreement.

22 2.26 Larry Gekiere, Sr., the Western Region President of Allmerica, as well as
 23 Miller, McClung and Burgoyne, all told Gates that due to his past service and contribution to
 24 the company, his files would be copied and provided to him at company expense, but were
 25 never provided to Gates as promised. This failure to provide Gates with his client files
 26 prevented him from servicing his clients.

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III. CLAIMS

A. BREACH OF CONTRACT

3.1 Gates re-alleges paragraphs 1.1 through 2.26 in their entirety.

3.2 Allmerica has contractual obligations to Gates under the Career Agent Agreement and AIMCO Agreements. The Career Agent Agreement obligations include the duty to pay commissions and fees earned, and to provide commission compensation based on an individual's vesting status at the time of termination. The AIMCO Agreement includes the duty to provide five days written notice prior to termination.

3.3 Allmerica breached its contractual obligations to Gates under the Career Agent Agreement by failing to pay commissions and fees earned by Gates through December 31, 2002 on his fee business, and by failing to timely pay vesting benefits owed to Gates. Allmerica continues to breach its contractual obligations to Gates by failing to pay all fees and commissions earned through December 31, 2002, in violation of the Agent Agreement. Gates' termination also caused the terms of his DAC loan to change, and prevented him from receiving lower interest charges and more favorable terms than were given to other advisors.

3.4 Allmerica also breached its obligations to Gates under the AIMCO contract by failing to provide Gates with five days written notice prior to termination, and by falsely stating the termination date on Gates' U-5 as December 11, 2002 and falsely stating that the termination was "voluntary".

3.5 Allmerica also breached its oral promise to provide Gates with copies of his client files, which prevented him from servicing his clients.

3.6 Allmerica's breaches of contract caused loss and damage to Gates in an amount to be proven at the time of hearing, but which is in excess of \$200,000.00.

B. DEFAMATION

3.7 Gates re-alleges paragraphs 1.1 through 3.6 in their entirety.

1 3.8 Both prior to and since the termination of Gates, Allmerica made false,
 2 defamatory statements regarding Gates, which Allmerica published to third parties, causing
 3 Gates harm as described below.

4 3.9 Allmerica engaged in libel *per se* by publishing an inaccurate and misleading U-
 5 5. The U-5 falsely states that Gates was and is currently under investigation and internal
 6 review for fraud or wrongful taking of property or violating investment related statutes,
 7 regulations, rules or industry standards of conduct. The U-5 also falsely infers that Gates
 8 intentionally misdirected client funds for his own personal benefit.

9 3.10 McClung, an executive manager with Allmerica, engaged in libel *per se* by
 10 writing letters to Gates' clients indicating that he no longer worked at Allmerica as of
 11 December 17, 2002. Under the doctrine of respondent superior, Allmerica is also liable for
 12 the acts of McClung.

13 3.11 From December 14, 2002 through December 31, 2002, Allmerica engaged in
 14 slander *per se* by informing Gates' clients who telephoned the Lake Oswego, Oregon office
 15 of Allmerica that Gates no longer worked at Allmerica.

16 3.12 McClung engaged in slander *per se* by telling Gates' clients that he is a poor
 17 investment advisor. These statements falsely impugn Gates' professional capabilities.
 18 Under the doctrine of respondent superior, Allmerica is also liable for the acts of McClung.

19 3.13 Burgoyne engaged in slander *per se* by falsely telling Allmerica advisors and
 20 staff that Burgoyne had to fire Gates because Gates deposited client funds into his own
 21 account, implying Gates was engaging in fraud and theft. These statements falsely impugn
 22 Gates' professional capabilities and falsely accuse him of criminal and fraudulent activity.
 23 Under the doctrine of respondent superior, Allmerica is also liable for the acts of the
 24 individual respondent Burgoyne.

25 3.14 David Gore ("Gore"), an investment advisor with Allmerica, engaged in slander
 26 *per se*. Gore was given business of Gates during the time Gates was told he could no

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1 longer write business for Allmerica. After Gore held the applications and checks totaling
 2 over \$400,000 for 1 ½ to 2 months, Gore sent the checks back to Gates' clients and told the
 3 clients that Gore could not recommend proceeding with the sales of such products
 4 recommended by Gates because it would be unethical to do so. These statements falsely
 5 impugn Gates' professional capabilities and accuse Gates of improper unethical conduct.
 6 Under the doctrine of respondent superior, Allmerica is also liable for the acts of Gore.

7 3.15 Allmerica's defamation adversely affected Gates' personal and professional
 8 reputation, causing him to incur economic losses in an amount to be proven at arbitration,
 9 and to suffer severe emotional distress. Gates is entitled to recover \$300,000 in
 10 noneconomic damages for Allmerica's wrongful conduct.

C. INTERFERENCE WITH BUSINESS RELATIONS

12 3.16 Gates re-alleges paragraphs 1 through 3.15 in their entirety.

13 3.17 Gates has protectable business relationships with individuals for whom he
 14 provides financial guidance.

15 3.18 Allmerica, Burgoyne, McClung and Gore interfered with Gates' relationships
 16 for an improper purpose and by improper means, including defaming Gates' professional
 17 reputation.

18 3.19 The wrongful interferences by Allmerica, Burgoyne, McClung and Gore have
 19 caused loss and damage to Gates in an amount to be proven at the time of hearing, but
 20 which is in excess of \$200,000.00

D. INTENTIONAL INFILCTION OF SEVERE EMOTIONAL DISTRESS

22 3.20 Gates re-alleges paragraphs 1 through 3.19 in their entirety.

23 3.21 Allmerica, Burgoyne, and its agents acted with knowledge that its conduct,
 24 omissions and false statements would cause Gates to suffer severe emotional distress, or
 25 knew that its acts and false statements were substantially certain to cause Gates to suffer
 26 severe emotional distress.

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3.22 Allmerica's conduct, omissions and false statements caused Gates to experience severe emotional distress.

3.23 Allmerica's acts, omissions and false statements constituted an extraordinary transgression of the bounds of socially tolerable conduct.

3.24 As a result of Allmerica's acts, omissions and false statements, Gates suffered severe emotional distress and anxiety, loss of reputation in the business community, humiliation, embarrassment, sleeplessness, and mental pain and suffering, and Gates is entitled to recover \$300,000 in noneconomic damages for Allmerica's wrongful conduct.

DATED this 8 day of December, 2003.

COSGRAVE VERGEER KESTER LLP

Michael C. Lewton, OSB #8728